

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

E-FILED - 9/18/07

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE Z. SALAZAR, BERTA F.
SALAZAR, MANUEL Z. SALAZAR,
MARIA A. SALAZAR, DORA
PANTELY, COASTAL BERRY CORP.,
TRICAL INC., D.W. MERCER INC.,
TAX COLLECTOR, and NEW WEST
FOODS INC.

Defendants.

No. C-00-20669-RMW

ORDER OF SALE

~~On September 21, 2007~~ On September 21, 2007, The United States' Motion for Entry of Decree of Sale came before this Court. Having reviewed the pleadings and good cause appearing, IT IS ORDERED,

1. Pursuant to 28 U.S.C., §§ 2001 and 2002 and 26 U.S.C. §§ 7402 and 7403, the Court rules and orders as follows:

2. Berta and Jose Salazar own one-half and Manuel Salazar owns one-half of the real property located at 1265 San Miguel Canyon Road, Watsonville, California 93906, and described in the Official Records in the office of the County Recorder, Monterey County, California, describing the real property as follows:

Beginning in the middle of the San Miguel Canyon Road at the Northwest corner of land of Hamby, from which a witness post marked T and H in the fence bears N. 69 1/4 degrees E., 45 Links distant; thence on the Northerly boundary of said

land of Hamby N. 69 1/4 degrees E., 24.56 chains to a station; thence N. 20 3/4 degrees W., 11.17 chains to a station; thence S. 69 1/4 degrees W., 20.24 chains to the middle of said road from which a witness stake bears N. 69 1/4 degrees E., 45 links distant; thence along the middle of said road S. 0 degrees 25' W., 11.97 chains to the place of beginning, and being the same land described in the Deed dated June 4, 1906, of record in Vol. 91 of Deeds, at Page 394, in the office of the County Recorder of Monterey County, California.

3. Berta and Jose Salazar own the real property located at 1265 San Miguel Canyon Road, Salinas, California 93907, and described in the Official Records in the office of the County Recorder, Monterey County, California, describing the real property as follows:

That portion of Lot 10 of that part of the Rancho Bolsa Nueva Y. Moro Cojo, belonging to Zadock Karner, in the County of Monterey, State of California, according to map filed May 19, 1884 in Book 1, Page 26, of Maps and Grants, in the office of the County Recorder of said county, described as follows:

Beginning at a post on the south boundary of the so called "Kay's Lot" at the northwesterly corner of said Lot 1; thence along said Karner Tract ; thence along said easterly boundary,

(1) N. 77 1/2 degrees E., 33.14 chains to the easterly boundary of said Karner tract; thence along said easterly boundary,

(2) S. 38 1/2 degrees E., 20.33 chains; thence

(3) S. 77 1/2 degrees W., 48.97 chains to the middle of the county road, as shown on said map; thence along the middle of said road,

(4) N. 32 1/4 degrees W., 5.04 chains; thence

(5) N. 35 3/4 degrees W., 3.50 chains; thence

(6) N. 25 3/4 degrees W., 2.70 chains; thence

(7) N. 75 1/4 degrees W., 3.50 chains; thence

(8) N. 20 3/4 degrees W., 1.30 chains; thence

(9) N. 29 1/2 degrees W., 2.50 chains; thence

(10) N. 84 1/2 degrees E., 4.00 chains; thence

(11) N. 49 1/4 degrees E., 3.50 chains; thence

(12) N. 67 3/4 degrees E., 4.00 chains; thence

(13) N. 31 3/4 degrees E., 1.52 chains to the point of beginning.

Except therefrom, that portion of said land described in the deed to Douglas R. James, et al., recorded November 1, 1963 in Reel 579, page 593, Official Records.

Also excepting therefrom that portion of said land described in the Deed to George Fredrick Witham, et ux, recorded March 16, 1979 in Reel 1316, page 75 Official Records.

4. The United States Marshal for the Northern District of California, his/her representative, or an Internal Revenue Service Property Appraisal and Liquidation Specialist ("PALS"), is authorized and directed under 28 U.S.C. §§ 2001 and 2002 to offer for public sale and to sell the Properties. The United States may choose either the United States Marshal or a PALS to carry out the sales under this order and shall make the arrangements for any sales as set forth in this Order.

5. The Marshal, his or her representative, or a PALS representative is authorized to have free access to the Properties and to take all actions necessary to preserve the Properties, including, but not limited to, retaining a locksmith or other person to change or install locks or other security devices on any part of the property, until the deeds to the Properties are delivered to the ultimate purchaser(s).

6. The terms and conditions of the sale of each property are as follows:

a. the sale of the Properties shall be free and clear of the interests of Jose Z. Salazar, Berta F. Salazar, Manuel Z. Salazar, Maria A. Salazar, Dora Pantely, Coastal Berry Corp., Trical Inc., D.W. Mercer Inc., Bay Fruit & Vegetable, Inc., Tax Collector for the County of Monterey, New West Foods Inc., Granite Rock Company, International Recovery, North Monterey Heights Corp., State of California Employment Development Dept., Dougherty Pump & Drilling, Inc., Crowley Sales and Exports, Inc., and Maria G. Guevara.

b. the sale shall be subject to the building lines, if established, all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the property, and easements and restrictions of record, if any;

c. the sale shall be held at the courthouse of the county or city where the Property is located, on the Property's premises, or at any other place in accordance with the provisions of 28 U.S.C. §§ 2001 and 2002;

d. the date and time for sale are to be announced by the United States Marshal, his representative, or a PALS;

1 e. notice of the sale shall be published once a week for at least four
2 consecutive weeks before the sale in at least one newspaper regularly issued and of general
3 circulation in Monterey County, and at the discretion of the Marshal, his representative, or a
4 PALS, by any other notice deemed appropriate. The notice shall contain a description of the
5 property and shall contain the terms and conditions of the sale in this order of sale;

6 f. the minimum bid will be set by the United States of America. If the
7 minimum bid is not met or exceeded, the Marshal, his or her representative, or a PALS may,
8 without further permission of this court, and under the terms and conditions in this order of sale,
9 hold a new public sale, if necessary, and reduce the minimum bid or sell to the second highest
10 bidder;

11 g. the successful bidder(s) shall be required to deposit at the time of the sale
12 with the Marshal, his representative, or a PALS a minimum of Ten Thousand Dollars (\$10,000),
13 with the deposit to be made by cash, or certified or cashier's check payable to the United States
14 of America.

15 Before being permitted to bid at the sale, bidders shall display to the Marshal, his/her
16 representative, or a PALS proof that they are able to comply with this requirement. No bids will
17 be received from any person(s) who have not presented proof that, if they are the successful
18 bidder(s), they can make the deposit required by this order of sale;

19 h. the balance of the purchase price for the Property is to be paid to the
20 United States Marshal or a PALS (whichever person is conducting the sales) within twenty (20)
21 days after the date the bid is accepted, by certified cashier's check payable to the United States of
22 America. If the bidder fails to fulfill this requirement, the deposit shall be forfeited and shall be
23 applied to cover the expenses of the sale, including commissions due under 28 U.S.C. § 1921(c),
24 with any amount remaining to be applied to the tax liabilities of Jose Z. Salazar, Berta F. Salazar
25 or Manuel Z. Salazar at issue herein. The Property shall be again offered for sale under the terms
26 and conditions of this order of sale. The United States may bid as a credit against its judgment
27 without tender of cash;
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i. the sale(s) of the property shall be subject to the confirmation by this Court. The Marshal or a PALS shall file a report of sale with the Court, together with a proposed order of confirmation of sale and proposed deed, within 20 days from the date of the balance of the purchase price;

k. on confirmation of the sale, all interests in, liens against, or claims to, the property that are held or asserted by all parties to this action (as stated in (a) above) are discharged and extinguished;

l. on confirmation of the sale, the recorder of deeds Monterey County, California shall cause transfer of the properties to be reflected on upon that county's register of title; and

m. the sale is ordered pursuant to 28 U.S.C. § 2001, and is made without right of redemption.

7. Until the properties are sold, defendants Jose Z. Salazar, Berta F. Salazar and Manuel Z. Salazar shall take all reasonable steps necessary to preserve the properties (including all building improvements, fixtures and appurtenances on the property) in its current condition, including, without limitation, maintaining a fire and casualty insurance policy on the property. They shall neither commit waste against the property nor cause or permit anyone else to do so. They shall neither do anything that tends to reduce the value or marketability of the property, nor cause or permit anyone else to do so. They shall not record any instruments, publish any notice, or take any other action (such as running newspaper advertisements or posting signs) that may directly or indirectly tend to adversely affect the value of the property or that may tend to deter or discourage potential bidders from participating in the public auction, nor shall they cause or permit anyone else to do so.

8. All persons occupying the properties shall leave and vacate the property permanently within thirty (30) days of the date of this Order, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures and appurtenances to the property). If any person fails or refuses to leave and vacate the property by the time specified in this Order, the United States Marshal's Office, alone, is authorized to take whatever action it

1 deems appropriate to remove such person(s) from the premises, whether or not the sale of such
2 property is being conducted by a PALS. If any person fails or refuses to remove his or her
3 personal property from the properties by the time specified herein, the personal property
4 remaining on the properties thereafter is deemed forfeited and abandoned, and the United States
5 Marshal's Office is authorized to remove it and to dispose of it in any manner it deems
6 appropriate, including sale, in which the proceeds of the sale are to be applied first to the
7 expenses of the sale and the balance to be distributed pursuant to further Order of this Court.
8 See, e.g., U.S. v. Burdline, 205 F.Supp.2d 1175, 1180-81 (W.D. Wash. 2002) (ordering sale
9 proceeds from tax foreclosure to be distributed first to allowed costs of state); cf. 26 U.S.C. §
10 6342 (providing that, where the United States seizes and sells property in satisfaction of a federal
11 tax lien, the proceeds of the sale shall be used first to pay "the expenses of levy and sale").

12 The proceeds arising from sale are to be held and distributed by the United States Marshal
13 or PALS, whichever entity sold the real properties, pursuant to the Order(s) confirming the sale
14 of the real property and ordering disbursement of the sale proceeds.

15 DATED this 18 day of September, 2007.

16 BY THE COURT:

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18 United States District Judge
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20 *The hearing set for September 21, 2007 is hereby vacated.
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CERTIFICATE OF SERVICE

I, **KATHY P. TAT** declare:

That I am a citizen of the United States of America and employed in San Francisco County, California; that my business address is Office of United States Attorney, 450 Golden Gate Avenue, Box 36055, San Francisco, California 94102; that I am over the age of eighteen years, and am not a party to the above-entitled action.

I am employed by the United States Attorney for the Northern District of California and discretion to be competent to serve papers. The undersigned further certifies that I caused a copy of the following:

[revised proposed] ORDER OF SALE

to be served this date upon the party(ies) in this action by placing a true copy thereof in a sealed envelope, and served as follows:

 X **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

 PERSONAL SERVICE (BY MESSENGER)

 FACSIMILE (FAX) No.: _____

to the parties addressed as follows:

SEE ATTACHED LIST

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on **September 17, 2007** at San Francisco, California.

/s/ Kathy Tat
KATHY P. TAT
Legal Assistant

SERVICE LIST

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Dougherty Pump & Drilling, Inc.
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Salinas, CA 93907

International Credit Recovery
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Monterey County Tax Collector
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8 P.O. Box 2510
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